On June 29, 1992, the United States Supreme Court handed down its decision in the high profile “takings” case, Lucas v. South Carolina Coastal Council (112 S.Ct. 2886). During its journey from the South Carolina courts to the United States Supreme Court, the case was hailed as a potential landmark in “takings” jurisprudence. Property rights advocates were particularly optimistic that the Court would take the opportunity in Lucas to strengthen protections for private property rights. The case probably fell short of these expectations, however, because the opinion was both narrowly drawn and raised new questions that will require further examination. This article discusses the decision, and analyzes its impacts.

BACKGROUND

In 1986, David Lucas purchased two residential lots on a South Carolina barrier island for $975,000. At the time, one single-family residence would have been allowed on each of the lots, and no permits would have been required from the South Carolina Coastal Council (“Council”). In 1988, South Carolina enacted the Beachfront Management Act (“Act”), which directed the Council to establish a “baseline” along the shoreline, seaward of which occupiable improvements would be prohibited. For David Lucas, the baseline drawn by the Council had the direct effect of barring the development of any habitable structures on his property.

Lucas filed suit in state court, arguing that the Act and its construction ban effected a taking of his property without just compensation, in violation of the Fifth Amendment to the United States Constitution. Lucas contended that the Act deprived him of his property’s entire value, and that he was entitled to compensation regardless of whether the State had legiti-
those cases where deprivation of all economically beneficial uses has been established, to defend regulations with more than a mere intimation that the use is inconsistent with the public interest. The Supreme Court expressed a willingness to take a hard look at the justification for a regulation by requiring support in the state’s property or nuisance law. Where takings are less than total, the Court has apparently left property owners to prove their case under the traditional takings analysis.

The Court pointedly discussed, but left for future consideration, the important question of the nature and extent of the “property” interest that is appropriate for a “total takings” analysis. In a footnote, the majority framed the issue with the example that where a “regulation requires a developer to leave 90% of a rural tract in its natural state, it is unclear whether [the Court] would analyze the situation as one in which the owner has been deprived of all economically beneficial use of the burdened portion of the tract, or as one in which the owner has suffered a mere diminution in value of the tract as a whole.”

If in the future the Court is willing to consider whether a property owner has been deprived of all economically beneficial use on only a portion of his property, the “total takings” rule announced in Lucas may prove to be significant. In that event, the takings equation might shift toward compensating property owners whenever all development is barred by government regulation on a segment of property recognized under state law. This would potentially hamper local government’s ability to implement certain land use controls, such as wetlands regulations, hillside protection regulations, and public land or open space dedication requirements. Without further judicial extension, however, the Lucas decision will probably be limited to those cases where government has deprived a property owner of virtually all economically beneficial use on an entire tract of property.

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The Public Trust Doctrine

The Public Trust Doctrine is likely to become increasingly important as a result of Lucas. Public trust doctrines typically provide that title to tidal and navigable waters and associated submerged lands is held by the State in trust for the public. By statute and case law, the public trust may extend to other lands, waters and natural resources. If title is held by the State, all use may be prohibited without triggering a taking.

Interestingly, in one of the first takings decisions after Lucas, Oregon’s Supreme Court held that beachfront property owners had no right to recover damages when state and local authorities denied them permits to build a seawall on their two vacant lots to make them suitable for hotel or motel development. The Court reasoned that there could not be a taking because the owners had no property interest in the dry sand area of the beach, as a matter of state law. Stevens v. City of Cannon Beach, 835 P. 2d 940 (1992).

What Does Planning Mean to You?

Over the years that I’ve been training local planning commissioners, I’ve asked the above question hundreds of times. Let me give you a sampling of the responses I’ve received:

- Planning means deciding how land will be used and for what purpose.
- Planning is an intelligent way to prepare for the inevitable.
- Planning is what we don’t do enough of.
- Planning is government trying to tell people what they can do with their land, which is wrong.
- Planning means making choices.
- Planning is what you do to keep some one from telling you what to do.
- Planning is what people do to shape the future.
- Planning is an imperfect process communities use to get ready for the unknown.
- Planning is a waste of time without fiscal and political commitments.
- Planning is our best hope for making tomorrow better than today.
- Planning is thinking before doing.

It is important for planning commissions to realize that communities must study future needs to better manage the present — and study the present to better care for the future. Anything less should be considered unacceptable.

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